

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Patrick Lynn, Police Chief 954-693-8320

PREPARED BY: Daniel J. Stallone, Code Compliance Official

SUBJECT: Resolution

AFFECTED DISTRICT: 3

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: MITIGATION - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF CODE COMPLIANCE LIENS IN CASE NOS. 06-425 AND 07-1008 FROM \$143,600.00 IN AMOUNT TO \$10,000.00; AND PROVIDING AN EFFECTIVE DATE. (tabled from December 3, 2008)

REPORT IN BRIEF: The Town of Davie Code Compliance Division has determined that the violations of the town code sections included in Code Compliance Case Nos. 06-425 and 07-1008 have been corrected and the property is currently in compliance and mitigation is possible.

The Code Compliance Division initiated a code compliance case on March 29, 2006, as related to the failure of the property owner to adhere to code sections 9-51(b): Overgrowth; 12-33(U): Nuisance, related to the damaged mobile home on the property; and 11-17: Derelict property, related to derelict vehicles on the property. On October 17, 2006 the Town Special Magistrate issued an Order Imposing Municipal Code Enforcement Lien and Administrative Fine in the amount of \$12,600.00 for 168 days of noncompliance for the above named code violations in Case No. 06-425.

The Code Compliance Division initiated a second code compliance case against the "Estate of David A. Worthington" on July 27, 2007. In Code Compliance Case No. 07-1008, the violations included code sections, 9-51(b): Overgrowth; 12-105: Swale landscape maintenance; 11-17: Derelict vehicle and/or property; and 12-33(U): Nuisance due to the damaged mobile home on the property. On October 16, 2007 the Town Special Magistrate issued an Order Imposing Municipal Code Enforcement Lien and Administrative Fine for Case No. 07-1008 in the amount of \$68,000.00 for 68 days of noncompliance for the above named code violations. On December 18, 2007, the Town Special Magistrate issued another Order Imposing Municipal Code Enforcement Lien and

Administrative fine in the amount of \$63,000.00 for 63 days of noncompliance for the above named code violations.

On October 28, 2008, a Special Magistrate Mitigation hearing was held and the current owner, Dale Leclercq, and the former owner, "Estate of David Worthington," were represented by Attorney Theodore Kaufman, who appeared on their behalf before the Special Magistrate and requested mitigation. Attorney Kaufman offered documentation to the Special Magistrate and the Code Compliance Division related to mitigating factors that included the Hurricane Wilma-related damages to the mobile home in October 2005, followed by the death of David Worthington on December 25, 2005, each of which contributed to the violations at the subject property.

Upon an evaluation of the testimony and evidence related to the mitigating factors, Special Magistrate Alan Gabriel offered a recommendation to the Town Council that the lien be reduced to \$10,000.00. The Town Council may consider the information related to the hurricane damages, the subsequent death of the respondent, the prolonged probate period and the property's current status of compliance with town codes, as each of these factors affect the outcome of this mitigation case.

PREVIOUS ACTIONS: On December 3, 2008, the Town Council tabled this item to December 17, 2008.

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): The Code Compliance Division submits the mitigation amount, derived from the Town Council-approved mitigation guidelines which equal \$158,970.98; this amount is greater than the lien amount due to the punitive nature of the mitigation guidelines and the lengthy period of noncompliance in this case. The Town Code Compliance Special Magistrate recommends the approval of a mitigation amount equal to \$10,000.00. The Code Compliance Division notes that the mitigation base fee for Town-incurred costs in the three (3) noncompliance hearings equals \$3,032.94, and in recognition thereof, would respectfully agree that the Town Council may consider the Special Magistrate's recommendation.

Attachment(s): Resolution, Mitigation Worksheet, Mitigation Application Review Form, Mitigation Request Summary, Mitigation Inspection Report, Special Magistrate Recommendation, Mitigation Guidelines.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF CODE COMPLIANCE LIENS IN CASE NOS. 06-425 AND CASE 07-1008 FROM \$143,600.00 IN AMOUNT TO \$10,000.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, David A. Worthington and Estate of David A. Worthington have requested a mitigation of a Code Compliance lien from \$143,600.00; and

WHEREAS, the Town of Davie Code Compliance Division has determined that the violation of Town Code Sections 9-51(b), 12-105, 11-17 and 12-33(U)) were corrected; and

WHEREAS, the Town of Davie Code Compliance Division Special Magistrate has proscribed a mitigation amount equal to \$10,000.00; and

WHEREAS, David A. Worthington and Estate of David A. Worthington and the Town of Davie Code Compliance Division are agreeable to the mitigation of the Code Compliance lien.

WHEREAS, the Town Council is agreeable to such mitigation of the Code Compliance lien.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the certain Code Compliance lien arising out of Case 06-425 and Case 07-1008 in the amount of \$143,600.00 against David A. Worthington and Estate of David A. Worthington, is hereby mitigated in amount to \$10,000.00.

SECTION 2. That this mitigated amount of \$10,000.00 be paid to the Town within 45 days of the enactment of this Resolution. Should this amount of \$10,000.00 not be paid within the specified time the lien shall revert to the original amount of \$143,600.00.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2008

MAYOR/COUNCIL MEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2008

**TOWN OF DAVIE
CODE COMPLIANCE DIVISION
MITIGATION APPLICATION REVIEW FORM**

SECTION 1: (To be completed by Code Compliance Supervisor)

1. Name of Respondent(s)/Applicant(s): Worthington, David A. and Estate of David A. Worthington
2. Case Number: Code Compliance Case no. 06-425
07-1008
3. Total amount of Code Compliance Lien(s)/Administrative Fine(s): \$143,600.00
4. Is Respondent(s)/Applicant(s) in compliance with applicable Town Code Sections? X Yes No
(If the answer to Question 4 is no, do not complete Question 5, as compliance is a prerequisite to further processing.)
5. Mitigation amount recommended by the Town Council approved guidelines: \$158,970.98

SECTION 2: (To be completed by Respondent(s)/Applicant(s))

1. Please state any and all reasons why the Town should agree to mitigate the Code Compliance Lien(s)/Administrative Fines:

See Attached

Signature: [Signature]

Date: 11/31/08

2. Please indicate the amount which you request the Code Compliance Lien(s) be mitigated to: \$3,100.00

NOTE: The Code Compliance Division will submit your request to the Town Council to either accept or deny your mitigation amount; if your request is less than the mitigation guideline amount, the Code Compliance Division shall automatically make a recommendation to deny your mitigation request. In the event you do not agree with the mitigation guideline amount as set forth in Section 1 above, the matter will be referred to a Special Magistrate who will make a recommendation to the Town Council. The decision to grant or deny the request for mitigation will be made by the Town Council. In the event the Town approves your mitigation request, you must pay the mitigated amount to the Town of Davie within 45 days of Town Council approval or the Code Compliance Lien(s)/Administrative Fine(s) will remain in effect in the original amount.

SECTION 3: (To be authorized by Department Director)

The Code Compliance Division hereby submits the request made by the Respondent/Applicant, in Section 2, to mitigate the Code Compliance Lien(s)/Administrative Fine(s) in Case Numbers 06-425 and 07-1018 from a total of \$ 158,970.98 to the amount requested by the Respondent/Applicant which is \$3,100.00 for consideration by the Town Council.

Daniel A. Stallone
Code Compliance Official

11-03-08
Date

Police Department Official

Date

THEODORE C. KAUFMAN
ATTORNEY AT LAW

260 S.E. 6th Street, Suite 402
Fort Lauderdale, Florida 33301

Telephone (954) 760-6260
(305) 653-5104
Fax (954) 760-6261

TOWN OF DAVIE
CODE COMPLIANCE DIVISION
MITIGATION APPLICATION REVIEW FORM

Code Compliance Case No.: 06-425
07-1008

SECTION 2:

The last record owner of the subject property located at 13301 S.W. 6th Court, Davie, Florida was David A. Worthington. Mr. Worthington passed away on December 25, 2005 (copy of Death Certificate attached as Exhibit "1").

At the time of Mr. Worthington's death, the property was left to Dale L. Leclercq via a Last Will and Testament. The property was not put into Probate until May 6, 2008 due to a lack of knowledge and lack of funds on the part of Mr. Leclercq, who is on Disability.

When the Code Compliance Infractions occurred after Hurricane Wilma, there was no one who was responsible for taking care of the property. As soon as the infractions came to the attention of Mr. Leclercq and neighbours of Mr. Worthington attempts were made to clean up the property and bring the property into compliance.

I, Theodore C. Kaufman, Esq., was contacted by one of the neighbours to Probate the Estate so that the property could be sold in April, 2008. Unfortunately, the sale never took place and the property remained as it was. All of the necessary documents were received by Theodore C. Kaufman, Esq. and a Summary Administration was filed on May 6, 2008 in the Probate Court of Broward County. The Order was signed on May 15, 2008. (Copies of Petition and Order attached as "Exhibit 2").

Since that time another prospective purchaser came forward with a contract on August 20, 2008 to purchase the property for \$66,000. In researching the title to the property, the Lien's placed upon the property from the Town of Davie were discovered. Since that time, Mr. Leclercq, who is now the owner of the property, and neighbours have made every effort to clean up the property and bring it into compliance.

As of the date of the Mitigation hearing on October 28, 2008, the property was substantially in compliance and full compliance has been accomplished that same day. (copies of Pictures of subject property attached as Exhibit "3").

At all times since Mr. Leclercq became the owner of the property and has known about the Lien's placed on the property due to Code Compliance infractions, every effort has been made to bring the property into compliance.

STATE OF FLORIDA

OFFICE of VITAL STATISTICS

CERTIFIED COPY

FLORIDA CERTIFICATE OF DEATH

NAME: **DAVID ARTHUR WORTHINGTON** Date of Birth: **December 27, 1934** Date of Death: **December 25, 2005**

Place of Birth: **Buffalo, New York** Place of Death: **Falm Beach**

Sex: **Male** Race: **White** Marital Status: **Married** Cause of Death: **Brother's Sudden**

Address: **901 N.E. 2nd Terrace** City: **Fort Lauderdale** State: **Florida** Zip: **33325**

Occupation: **Accountant** Employer: **Banking**

Signature: **William H. Sherman** Date: **JAN 10 2006**

CAUSE OF DEATH NOT FILMED
PER FS. 382.008 & F.S. 382-025

2063816

CERTIFICATION OF VITAL RECORD

2063816

exhibit 11

EXHIBIT "2"
PART A

IN THE CIRCUIT COURT FOR DADE COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF File No.:

DAVID ARTHUR WORTHINGTON

Deceased

PETITION FOR SUMMARY ADMINISTRATION
(testate)



Petitioner, Jeri Lee Armstrong alleges:

1. Petitioner has an interest in the above estate as Personal Representative named in the Last Will and Testament of David Arthur Worthington.

Their names and addresses are set forth in paragraph 3 and the name and office address of their attorney are set forth at the end of this petition.

2. Decedent, whose last known address was 13301 S.W. 6th Court, Davie, Florida 33325 and, if known, whose age was 69 and whose social security number is XXX-XX-9745 died on December 25, 2005 at Boca Raton, Florida and on the date of death, decedent was domiciled in Broward County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationships to decedent and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP
Dale J. Leclercq	13301 S.W. 6 th Court Davie, Florida	Friend

4. Venue of this proceeding is in this county because the Decedent resided in Broward County, Florida.

5. The original of the decedent's last will, dated September 14, 2005 accompanies this petition.

6. Petitioners are unaware of any unrevoked will or codicil of decedent other than as set forth in paragraph 5.

7. Petitioners are entitled to summary administration because:

a. Decedent's will does not direct administration as required by Chapter 733 of the Florida Probate Code.

b. To the best knowledge of the petitioners, the value of the entire estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed \$75,000

c. The decedent has been dead for more than two years.

8. The following is a complete list of the assets in this estate and their estimated values, together with those assets claimed to be exempt:

Assets (Exempt Property)	Estimated Value
Homestead Property located at 13301 S.W. 6 th Court Davie, Florida Legally described as: Lot 17, Block 2, ALANDER SUBDIVISION, according to the Plat thereof, recorded in Plat Book 67, Page 19 of the Public Records of Broward County, Florida	\$95,000.00

9. With respect to claims of creditors:

a. All claims of creditors are barred.

10. It is proposed that all assets of the decedent including exempt property, be distributed to the following:

Name	Asset, Share or Amount
	Homestead Property located at 13301 S.W. 6 th Court Davie, Florida Legally described as: Lot 17, Block 2, ALANDER SUBDIVISION, according to the Plat thereof, recorded in Plat Book 67, Page 19 of the Public Records of Broward County, Florida
Dale J. Leclercq	(100% of above asset)

Petitioners waive notice of hearing on this petition and request that the decedent's last will be admitted to probate and an order of summary administration be entered directing distribution of the assets in the estate in accordance with the schedule set forth in paragraph 10 of this petition.

Under penalties of perjury, we declare that we have read the foregoing, and the facts alleged are true, to the best of our knowledge and belief.

Signed on May 3 2008.


JERN LEE ARMSTRONG



THEODORE C. KAUFMAN
Attorney for Petitioner
Florida Bar No. 969915
200 S.E. 6th Street, Suite 404
Fort lauderdale, Florida 33301
Telephone: (954) 760-6260

Exhibit 2
PART B

IN THE CIRCUIT COURT FOR DADE COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

File No.:

08 - - 2343

DAVID ARTHUR WORTHINGTON

61 J

Deceased.

ORDER OF SUMMARY ADMINISTRATION
(testate)

A TRUE COPY
Circuit Court Seal

On the petition of JERI LEE ARMSTRONG for summary administration of the estate of DAVID ARTHUR WORTHINGTON, deceased, the court, finding that the decedent died on December 25, 2005; that all interested persons have been served proper notice of the petition and hearing, or have waived notice thereof; that the material allegations of the petition are true; that the will dated September 14, 2005, has been admitted to probate by order of this court as and for the last will of the decedent; and that the decedent's estate qualifies for summary administration and an Order of Summary Administration should be entered, it is

ADJUDGED that:

1. There be immediate distribution of the assets of the decedent as follows:

Name	Address	Asset, Share or Amount
		Homestead Property located at 13301 S.W. 6 th Court Davie, Florida Legally described as: Lot 17, Block 2, ALANDER SUBDIVISION, according to the Plat thereof, recorded in Plat Book 67, Page 19 of the Public Records of Broward County, Florida
Dale J. Leclercq	13301 S.W. 6 th Court Davie, Florida 33325	(100% of above asset)

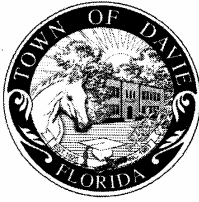
2. Those to whom specified parts of the decedent's estate are assigned by this order shall be entitled to receive and collect the same, and to maintain actions to enforce the right.

3. Debtors of the decedent, those holding property of the decedent, and those with whom securities or other property of decedent are registered, are authorized and empowered to comply with this order by paying, delivering, or transferring to those specified above the parts of the decedent's estate assigned to them by this order, and the persons so paying, delivering, or transferring shall not be accountable to anyone else for the property.

ORDERED on May 15, 2008

DALE ROSS

Circuit Judge



TOWN OF DAVIE
POLICE DEPARTMENT
CODE COMPLIANCE DIVISION

1230 SOUTH NOB HILL ROAD • DAVIE, FLORIDA 33324
PHONE: 954.693.8237 • FAX: 954.693.8399 • WWW.DAVIE-FL.GOV

MITIGATION INSPECTION REPORT

CASE NO. 06-425 AND 07-1008

DATE FINAL ORDER ISSUED: 4/18/06 & 8/2/07 INSPECTION DATE: 10/28/08

RESPONDENT(S) David A. Worthington and the Estate of David A. Worthington

PROPERTY ADDRESS 13301 SW 6 Court Davie, FL 33325

VIOLATIONS.....COMPLIED.....NOT COMPLIED (check one)

MITIGATION HEARING REQUEST (DATE): 10/28/08

LIST VIOLATIONS NOT COMPLIED:

1. 9-51(b): Overgrowth
2. 12-105: Swale Maintenance
3. 11-17 Derelict Property/Vehicle
4. 12-33(U) Nuisance
5. _____

Comments: _____

INSPECTOR *DP Phillips*
SIGNATURE _____ **DATE** 10/30/08

**WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.**

ATTORNEYS AT LAW

A PROFESSIONAL LIMITED LIABILITY COMPANY
INCLUDING PROFESSIONAL ASSOCIATIONS

BROWARD OFFICE

200 EAST BROWARD BOULEVARD
SUITE 1900
FORT LAUDERDALE, FLORIDA 33301

TELEPHONE 954-763-4242
FACSIMILE 954-764-7770
WWW.WSH-LAW.COM

MIAMI-DADE OFFICE

2525 PONCE DE LEON BOULEVARD • SUITE 700
CORAL GABLES, FLORIDA 33134
TELEPHONE 305-854-0800 • FACSIMILE 305-854-2323

*OF COUNSEL

October 28, 2008

MITCHELL BIERMAN, P.A.
NINA L. BONISKE, P.A.
MITCHELL J. BURNSTEIN, P.A.
JAMIE ALAN COLE, P.A.
STEPHEN J. HELFMAN, P.A.
GILBERTO PASTORIZA, P.A.
MICHAEL S. POPOK, P.A.
JOSEPH H. SEROTA, P.A.
SUSAN L. TREVARTHEN, P.A.
RICHARD JAY WEISS, P.A.
DAVID M. WOLPIN, P.A.

DANIEL L. ABBOTT
GARY L. BROWN
LYNN M. DANNHEISSER
IGNACIO G. DEL VALLE
ALAN L. GABRIEL
DOUGLAS R. GONZALES
MATTHEW H. MANDEL
BRETT J. SCHNEIDER

LORI ADELSON*
LILLIAN M. ARANGO*
SHAWNTOYIA N. BERNARD
JEFF P.H. CAZEAU
ARYE P. CORBETT
RAQUEL ELEJABARRIETA

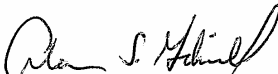
CHAD S. FRIEDMAN
MACADAM J. GLINN
R. BRIAN JOHNSON
JOHN J. KENDRICK III
HARLENE SILVERN KENNEDY
KAREN LIEBERMAN*
JOHANNA M. LUNDGREN
KATHRYN M. MEHAFFEY
HARRIS S. NIZEL
ALEXANDER L. PALENZUELA-MAURI*
MATTHEW PEARL
DIANE P. PEREZ
JOHN J. QUICK
ANTHONY L. RECIO
SCOTT A. ROBIN
DANIEL A. SEIGEL
GAIL D. SEROTA*
JONATHAN C. SHAMRES
ESTRELLITA S. SIBILA
ANTHONY C. SOROKA
EDUARDO M. SOTO
MICHAEL L. STINES
NANCY STUPARICH*
BLANCA M. VALLE
GLORIA M. VELAZQUEZ-MEITIN
CHRISTOPHER J. VOLK
LAURA K. WENDELL*
JAMES E. WHITE

Daniel Stallone, Code Compliance Supervisor
TOWN OF DAVIE
1230 South Nob Hill Road
Davie, Florida 33324

RE: Mitigation Request for Code Enforcement Case No. 06-425 and Case No. 07-1008
TOWN OF DAVIE v. DAVID A. WORTHINGTON and ESTATE OF DAVID A.
WORTHINGTON

Dear Mr. Stallone:

At the Town of Davie Special Magistrate Hearing held on October 28, 2008, the above referenced Mitigation Request was heard. Upon testimony heard and the evidence received, it is my recommendation, as Special Magistrate and after having considered the special considerations and findings regarding this matter, that the Town of Davie Council accept the request for mitigation from the original Code Enforcement lien amount of \$143,600.00 to the reduced sum of \$10,000.00


ALAN L. GABRIEL, Esquire
Special Magistrate

ALG/kgc/06-425, 07-1008 and 07-1008/RB.mit

**TOWN OF DAVIE CODE COMPLIANCE
MITIGATION WORKSHEET**

Case

Numbers: 06-425
07-1008

Respondent: Worthington, David A. and
Estate of David A. Worthington

Address: 13301 SW 6 Court
Davie, FL 33325

Lien Amount:	\$12,600.00	10/17/2006
	\$68,000.00	10/16/2007
	\$63,000.00	12/18/2007
Total:	\$143,600.00	

<u>Mitigation Recommendation:</u>	\$ 158,970.85
<u>(as per approved mitigation guidelines)</u>	

A: 35% of Lien Amount, \$143,600 equals	\$ 50,260.00
---	--------------

B: 299 days of non-compliance = 5 periods of 60 days 15% per 60 days noncompliance = 75% of \$143,600	\$ 107,700.00
--	---------------

C: Mitigation Base Fee (Town costs incurred by Code Compliance)	\$ 1,010.98
--	-------------

Mitigation Total:	\$ 158,970.98
--------------------------	----------------------

MITIGATION GUIDELINES

FINE AMOUNT

RECOMMENDATION

Fine to \$10,000	7.5% of the amount plus an additional 5% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$10,000 - \$20,000	10.0% of the amount plus an additional 6% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$20,001 - \$30,000	12.5% of the amount plus an additional 7% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$30,001 - \$40,000	15.0% of the amount plus an additional 8% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$40,001 - \$50,000	17.5% of the amount plus an additional 9% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$50,001 - \$60,000	20.0% of the amount plus an additional 10% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$60,001 - \$70,000	22.5% of the amount plus an additional 11% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$70,001 - \$80,000	25.0% of the amount plus an additional 12% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$80,001 - \$90,000	27.5% of the amount plus an additional 13% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$90,001 - \$100,000	30.0% of the amount plus an additional 14% For each sixty (60) days of violation plus actual costs incurred by the Town.
Over \$100,000	35.0% of the amount plus an additional 15% For each sixty (60) days of violation plus actual costs incurred by the Town.

This schedule would be utilized for first time violators and repeat violators.

MITIGATION BASE FEE (COST OF CASE ADMINISTRATION AND DEVELOPMENT) SHALL BE ADDED TO THE TOTAL DERIVED FROM APPLICATION OF ABOVE GUIDELINES. THE MITIGATION BASE FEE IS BASED UPON THE EXPENSES INCURRED BY TOWN EMPLOYEES AND ALL ACCOMPANYING COSTS.
MITIGATION BASE FEE* \$ 1010.98

*Subject to revision as per current staff salaries.